(B) A summary of the facts and opinions to which the witness is expected to testify.

(iv) *Supplementing the disclosure.* The parties must supplement these disclosures when required under § 18.53.

(3) *Prehearing disclosures.* In addition to the disclosures required by paragraphs (c)(1) and (2) of this section, a party must provide to the other parties and promptly file the prehearing disclosures described in § 18.80.

(4) *Form of disclosures.* Unless the judge orders otherwise, all disclosures under this paragraph (c) must be in writing, signed, and served.

(d) *Signing disclosures and discovery requests, responses, and objections*—(1) *Signature required; effect of signature.* Every disclosure under paragraph (c) of this section and every discovery request, response, or objection must be signed by at least one of the party's representatives in the representative's own name, or by the party personally if unrepresented, and must state the signer's address, telephone number, facsimile number, and email address, if any. By signing, a representative or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(i) With respect to a disclosure, it is complete and correct as of the time it is made; and

(ii) With respect to a discovery request, response, or objection, it is:

(A) Consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(B) Not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(C) Neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) *Failure to sign.* Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the judge must strike it unless a signature is promptly supplied after the omission is called to the representative's or party's attention.

(3) *Sanction for improper certification.* If a certification violates this section without substantial justification, the judge, on motion or on his or her own, must impose an appropriate sanction, as provided in § 18.57, on the signer, the party on whose behalf the signer was acting, or both.

§ 18.51 Discovery scope and limits.

(a) *Scope in general.* Unless otherwise limited by a judge's order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the judge may order discovery of any matter relevant to the subject matter involved in the proceeding. Relevant information need not be admissible at the hearing if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by paragraph (b)(4) of this section.

(b) *Limitations on frequency and extent*—(1) *When permitted.* By order, the judge may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under § 18.64. The judge's order may also limit the number of requests under § 18.63.

(2) *Specific limitations on electronically stored information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the judge may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of paragraph (b)(4) of this section. The judge may specify conditions for the discovery.

(3) *Inadvertently disclosed privileged or protected information.* By requesting electronically stored information, a party consents to the application of Federal Rule of Evidence 502 with regard to inadvertently disclosed privileged or protected information.

(4) *When required.* On motion or on his or her own, the judge must limit the frequency or extent of discovery otherwise allowed by these rules when:

(i) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(c) *Hearing preparation: Materials*—(1) *Documents and tangible things.* Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for hearing by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to paragraph (d) of this section, those materials may be discovered if:

(i) They are otherwise discoverable under paragraph (a) of this section; and

(ii) The party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(2) *Protection against disclosure.* A judge who orders discovery of those materials must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's representative concerning the litigation.

(3) *Previous statement.* Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a judge's order. A previous statement is either:

(i) A written statement that the person has signed or otherwise adopted or approved; or

(ii) A contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites substantially verbatim the person's oral statement.

(d) *Hearing preparation: Experts*—(1) *Deposition of an expert who may testify.* A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If §18.50(c)(2)(ii) requires a report from the expert the deposition may be conducted only after the report is provided, unless the parties stipulate otherwise.

(2) *Hearing-preparation protection for draft reports or disclosures.* Paragraphs (c)(1) and (2) of this section protect drafts of any report or disclosure required under §18.50(c)(2), regardless of the form in which the draft is recorded.

(3) *Hearing-preparation protection for communications between a party's representative and expert witnesses.* Paragraphs (c)(1) and (2) under this section protect communications between the party's representative and any witness required to provide a report under §18.50(c)(2)(ii), regardless of the form of the communications, except to the extent that the communications:

(i) Relate to compensation for the expert's study or testimony;

(ii) Identify facts or data that the party's representative provided and that the expert considered in forming the opinions to be expressed; or

(iii) Identify assumptions that the party's representative provided and that the expert relied on in forming the opinions to be expressed.

(4) *Expert employed only for hearing preparation.* Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for hearing and whose testimony is not anticipated to be used at the hearing. But a party may do so only:

(i) As provided in §18.62(c); or

(ii) On showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(e) *Claiming privilege or protecting hearing-preparation materials*—(1) *Information withheld.* When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as hearing-preparation material, the party must:

(i) Expressly make the claim; and

(ii) Describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(2) *Information produced.* If information produced in discovery is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim must notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the judge for an *in camera* determination of the claim. The producing party must preserve the information until the claim is resolved.

[80 FR 28785, May 19, 2015, as amended at 80 FR 37539, July 1, 2015]

§ 18.52 Protective orders.

(a) *In general.* A party or any person from whom discovery is sought may file a written motion for a protective order. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without the judge's action. The judge may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) Forbidding the disclosure or discovery;

(2) Specifying terms, including time and place, for the disclosure or discovery;

(3) Prescribing a discovery method other than the one selected by the party seeking discovery;

(4) Forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(5) Designating the persons who may be present while the discovery is conducted;

(6) Requiring that a deposition be sealed and opened only on the judge's order;

(7) Requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way;

and

(8) Requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the judge directs.

(b) *Ordering discovery.* If a motion for a protective order is wholly or partly denied, the judge may, on just terms, order that any party or person provide or permit discovery.

§ 18.53 Supplementing disclosures and responses.

(a) *In general.* A party who has made a disclosure under § 18.50(c)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response:

(1) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(2) As ordered by the judge.

(b) *Expert witness.* For an expert whose report must be disclosed under § 18.50(c)(2)(ii), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the